



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

C. Robert Heath, Esq.
Denise Nance Pierce, Esq.
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443

AUG 27 2002

Dear Mr. Heath and Ms. Pierce:

This letter is in reference to the request to withdraw our objection to the 2001 redistricting plans for the commissioners court, justice of the peace, and constable precincts for Waller County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your request on August 5, 2002; supplemental information was received through August 12, 2002.

We have considered carefully the information you have provided, as well as census data, comments from interested parties, and other information, including the county's previous submissions. As discussed further below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must continue to object to the 2001 redistricting plans for the commissioners court, justice of the peace, and constable districts.

In your December 12, 2001, submission you provided us with a map and demographics that indicated in the existing, or benchmark, plan approximately five percent of the City of Prairie View was in Precinct 1 and the remainder was in Precinct 3. In support of your request for reconsideration, you have now informed us that Prairie View is entirely within Precinct 3. As support for this proposition, you have noted that the metes and bounds description included in your 1991 Section 5 submission of the redistricting plan does not divide the city and that persons who live in the area have voted in Precinct 3 elections for the past ten years.

You also have requested reconsideration on the basis that there are additional elections which show that minority voters in Precinct 1 can comfortably elect a candidate of choice today, and therefore, the reduction in minority voters in Precinct 1 will not cause retrogression. In the alternative, you argue that Precinct 1 is not truly a "majority-minority" district because the percentage of Hispanic voters is less than the percentage of the Hispanic voting age population. As your final basis for reconsideration, you suggest that there is no non-retrogressive alternative, which complies with all of the county's 2001 redistricting criteria, one of which is to keep Prairie View in one commissioner's precinct.

We have reviewed the file containing the 1991 redistricting submission, and it does not appear that you submitted an incorrect benchmark to us in December 2001. Although your 1991 submission did include the metes and bounds description for the plan in which the City of Prairie View is entirely in Precinct 3, the county identified the changes for Section 5 review by providing maps with supporting demographics that showed approximately 95 percent of the city was in Precinct 3 and five percent was in Precinct 1. A submitting jurisdiction must "identify with specificity each change that it wishes the United States Attorney General to consider" in a Section 5 submission, and "any ambiguity in the scope of a preclearance request must be resolved against the submitting authority." Clark v. Roemer, 500 U.S. 646, 656 (1991).

Regarding your other claims, our statistical analysis indicates that regardless of which configuration of Precinct 1 is used as the benchmark, the proposed reduction in the minority voting age percentage in Precinct 1 casts substantial doubt on whether minority voters would retain the ability to elect their candidate of choice under the proposed plan, particularly if the current incumbent in Precinct 1 declines to run for office again. Your inclusion of additional election results for statewide races does not alter that conclusion. We have also considered that Hispanic voters do not match their percentage of the voting age population. Our determination in analyzing the benchmark plan was not based purely on the absolute percentages of the minority age voting population, but on our analysis of election returns for interracial races in Precinct 1.

Although we understand that by placing Prairie View in one district under the 2001 proposed plan the county was seeking to adhere to its redistricting criteria, as set forth in the Department's redistricting guidance, "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria."

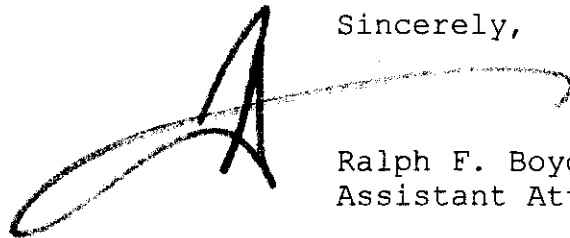
See Department's Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001). Therefore, the fact that a non-retrogressive plan requires a slight deviation from your redistricting criteria is not sufficient reason to withdraw the objection.

In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. On behalf of the Attorney General, I must continue to object to the 2001 redistricting plans for the commissioners court, justices of the peace, and constables. A subsequent letter will address your Section 5 submission of the July 30, 2002, redistricting plans for the commissioners court, justices of the peace, and constables.

We note in your submission that you stated the county will continue to implement the objected-to 2001 redistricting plan by allowing the winners from the illegally held March 2002 primary to be listed on the ballot in the upcoming general election in November. Unless a declaratory judgment from the District of Columbia Court is obtained, however, the 2001 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10. We would request that you contact us within ten days of the date of this letter with regard to the county's course of action concerning this matter.

If you should have any questions on any matter discussed in this letter, you should call Mr. Timothy Mellett (202-307-6267), an attorney in the Voting Section. Refer to File No. 2001-3951 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to be 'RFB', with a long horizontal flourish extending to the right.

Ralph F. Boyd, Jr.
Assistant Attorney General